

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

RICHARD CHARLES STRICKLER,

CASE NO. C15-5087-JCC

Plaintiff,

ORDER

v.

CAROLYN W. COLVIN, Acting  
Commissioner of Social Security,

Defendant.

This matter comes before the Court on the Report and Recommendation of the Honorable Karen L. Strombom, United States Magistrate Judge (Dkt. No. 19), Plaintiff's Objections thereto (Dkt. No. 20), and Defendant's Response (Dkt. No. 21). Having thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument unnecessary and hereby ADOPTS the Report and Recommendation over Plaintiff's objections.

**I. BACKGROUND**

Plaintiff Richard Charles Strickler is a former Fire Captain with the city of Washougal, Washington. (Dkt. No. 10-6 at 36; Dkt. No. 14 at 2.) Beginning around 2003, Mr. Strickler's co-workers and supervisor noticed the back pain he was experiencing, and the affect it had on his work performance. (Letter from Ronald Caster, Dkt. No. 10-6 at 36.) Mr. Strickler has been diagnosed with fibromyalgia. (Dkt. No. 10-2 at 16.) In 2005, Mr. Strickler retired after struggling to stay on the job. (*Id.*) After applying for disability benefits and being denied, Mr.

1 Strickler appeared before Administrative Law Judge (“ALJ”) S. Andrew Grace on May 2, 2013  
2 in Portland, Oregon. (Dkt. No. 10-2 at 14.) The ALJ found that Mr. Strickler was not disabled  
3 within the meaning of the Social Security Act and denied his request for benefits. (*Id.*) He  
4 appealed to this Court, and on August 19, 2015, the Honorable Karen L. Strombom, United  
5 States Magistrate Judge, issued a Report and Recommendation recommending this Court affirm  
6 the decision of the ALJ. (Dkt. No. 19.) Mr. Strickler objected on two grounds, (Dkt. No. 20) and  
7 Defendant Responded to Plaintiff’s objections (Dkt. No. 21).

## 8 **II. DISCUSSION**

### 9 **A. Standard of Review**

10 Upon objection to a magistrate’s report and recommendation, district courts are required  
11 to review *de novo* “those portions of the report or specified proposed findings or  
12 recommendations to which objection is made.” 28 U.S.C. § 636(b)(1).

13 Mr. Strickler objects on two grounds. First, he argues that Judge Strombom applied “too  
14 stringent a standard” in assessing the ALJ’s reasoning for assigning little weight to the opinion  
15 of Dr. Michael Ferrell, M.D. (Dkt. No. 20 at 1.) Second, he objects that Judge Strombom “failed  
16 to observe the clear and convincing standard that applies to assessing a claimant’s credibility” in  
17 her evaluation of the ALJ’s reasoning for weighing Mr. Strickler’s credibility. (*Id.* at 2.)

18 Pursuant to this *de novo* review, this Court reaches the same conclusions as Judge  
19 Strombom with respect to the ALJ’s weight of Dr. Ferrell’s testimony and assessment of Mr.  
20 Strickland’s credibility. Accordingly, the Report and Recommendation is ADOPTED.

### 21 **B. Objection One: Standard of Review and the ALJ’s Assignment of Weight to** 22 **Medical Testimony**

23 The ALJ assigned limited weight to the medical opinion of treating physician Dr.  
24 Ferrell. (Dkt. No. 10-2 at 19.) This was based on (1) an inconsistency between the limitations  
25 period noted on a form filled out by Dr. Ferrell (2005-2010) and the date of an actual diagnosis  
26 based on those limitations (2013) as well as (2) the fact that Dr. Ferrell only saw Mr. Strickler

1 twice without performing an examination. (*Id.* at 19–20.) On appeal, Mr. Stickler argued that  
2 he, in fact, visited Dr. Ferrell a third time and that therefore the ALJ’s assignment of little  
3 weight to Dr. Ferrell’s medical opinion was not supported by substantial evidence. (Dkt. No. 14  
4 at 8.)

5 In evaluating the ALJ’s basis for rejecting Dr. Ferrell’s testimony, Judge Strombom  
6 explicitly noted the deference typically due treating and examining physicians. (Dkt. No. 19 at  
7 5.) (citing *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996). Judge Strombom found that the  
8 overall record was “insufficient to call into question the ALJ’s reasonable inference that the  
9 relatively few number of visits Dr. Ferrell had with Plaintiff undermined his credibility.” (*Id.* at  
10 6.) (citing 20 C.F.R. § 404.15.27(c)(2)(i)). This Court agrees. Upon *de novo* review in light of  
11 Mr. Strickler’s objection, the Court determines that the difference between two and three visits  
12 to Dr. Ferrell does not change the determination that the ALJ had specific, legitimate reasons,  
13 supported by substantial evidence, to discount Dr. Ferrell’s medical opinion. As such, no  
14 reversible error occurred with respect to the ALJ’s assignment of weight to that medical  
15 testimony.

16 **C. Objection Two: Grounds for Weighing Mr. Strickler’s Credibility**

17 The ALJ made an adverse determination with respect to Mr. Strickler’s credibility based  
18 on his conduct surrounding an evaluation by Dr. Jessica Simpson, M.D. (Dkt. No. 10-2 at 18.)  
19 The record before the ALJ indicated that Mr. Stickler exhibited a lack of interest in testing and  
20 follow-up pursuant to his evaluation by Dr. Simpson. (*Id.*) On appeal, Mr. Stickler presented  
21 evidence of a voicemail he left Dr. Simpson on November 9, 2009, expressing that he had  
22 “reconsidered her recommendations for lab work and possible medication and would like to  
23 follow her suggestions.” (Dkt. No. 14 at 7.) In other words, Mr. Strickler argues—on appeal and  
24 in his present objections—that this additional evidence makes the ALJ’s credibility finding  
25 based on his lack of interest in treatment constitute reversible error.

26 Judge Strombom concluded that evidence of this voicemail from Mr. Strickler did not

1 negate the finding that the ALJ had clear and convincing reasons to discount his credibility.  
2 (Dkt. No. 19 at 8.) Mr. Stickler objects to the Report and Recommendation, arguing that Judge  
3 Strombom “essentially failed to observe the clear and convincing standard that applies to  
4 assessing a claimant’s credibility” based on her finding that evidence of a voice mail from Mr.  
5 Strickler to Dr. Simpson was not consequential to the ALJ’s determination. (Dkt. No. 20 at 2.)  
6 To the contrary, Judge Strombom very clearly applied the “clear and convincing” standard to  
7 her review of the ALJ’s credibility determination. (*Id.* at 8–9.)

8 The ALJ may consider “ordinary techniques of credibility evaluation” in determining a  
9 claimant’s credibility. *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996). In discounting  
10 claimant credibility, “the ALJ must identify what testimony is not credible and what evidence  
11 undermines the claimant’s complaints.” *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995), *as*  
12 *amended* (Apr. 9, 1996). As Judge Strombom indicated, questions of credibility are solely  
13 within the control of the ALJ. *See Sample v. Schweiker*, 694 F.2d 639, 642 (9th Cir. 1982).

14 Upon its *de novo* review, this Court also finds that the ALJ identified affirmative, clear  
15 and convincing reasons to discount Mr. Strickler’s credibility. These included the “minimal”  
16 treatment records contained in the overall evidence, the fact that Mr. Stickler demonstrated  
17 “improvement with treatment,” the fact that Mr. Stickler’s reports of the timing of his symptoms  
18 was inconsistent with treatment records, the nature of Mr. Stickler’s daily activities, “which  
19 involved remodeling his house, walking a lot, and being very active.” (Dkt. No. 10-2 at 16–19.)

20 In short, as already determined by Judge Strombom, the ALJ provided clear and  
21 convincing reasons to discount Mr. Stickler’s credibility. Even in light of the voicemail to Dr.  
22 Simpson, it was not reversible error for the ALJ to assess Mr. Stickler’s credibility in the  
23 manner he did.

### 24 **III. CONCLUSION**

25 For the foregoing reasons, the Court hereby ADOPTS the Report and Recommendation  
26 (Dkt. No. 19) over Plaintiff’s objections. Accordingly, the decision of the ALJ is affirmed and

1 the above-captioned matter is dismissed.

2 DATED this 25 day of September 2015.

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8 John C. Coughenour  
9 UNITED STATES DISTRICT JUDGE  
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